

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**JAMES R. GRADDIC, JR.,**

**Plaintiff,**

**v.**

**Civil Action 2:19-cv-03413**

**Judge Sarah D. Morrison**

**Chief Magistrate Judge Elizabeth P. Deavers**

**MEGAN J. BRENNAN, et al.,**

**Defendants.**

**ORDER**

Plaintiff initiated this lawsuit by filing a Motion for Leave to Proceed *in forma pauperis* on August 8, 2019. (ECF No. 1.) On August 12, 2019, the Clerk issued a Notice of Non-Issuance of Summons, directing Plaintiff to resubmit a summons on the proper form and providing Plaintiff with a copy of that form. (ECF No. 2.) The Court granted Plaintiff's Motion to Proceed *in forma pauperis* on August 13, 2019, and, *inter alia*, directed Plaintiff to resubmit a proper summons in accordance with the Clerk's Notice. (ECF No. 3.) On November 18, 2019, because service of process had not been completed as required by Federal Rule of Civil Procedure 4(m), the Court issued an Order to Show Cause as to why the action should not be dismissed and why an extension of time to effect service should be allowed. (ECF No. 5.) Plaintiff did not respond to this Order. On December 9, 2019, the Court issued another Order to Show Cause as to why the action should not be dismissed for failure to prosecute and failure to follow Court orders. (ECF No. 6, advising that failure to respond to the Order would result in the recommendation that the action be dismissed without prejudice pursuant to Fed. R. Civ. P.

4(m).) Upon request by Plaintiff on three different occasions, the Court extended the deadline by which Plaintiff must effect service on Defendants to January 17, 2020, and then to January 29, 2020, and finally to February 10, 2020. (ECF Nos. 8, 10, 13.) In the most recent order extending this deadline, the Court advised Plaintiff that no additional extensions would be granted. (ECF No. 13.)

On February 12, 2020, Plaintiff filed another Motion for Extension of Time to Effect Service, but also submitted summonses and U.S. marshal forms for all but two Defendants. (ECF No. 14.) The Court denied the Motion for Extension of Time as to those two Defendants, Juan Zamudio and Vanessa Hopkins, and directed the U.S. Marshal to proceed with service of the other six Defendants. (ECF No. 15.)

To date, Plaintiff has not submitted proper summons forms for Defendants Juan Zamudio and Vanessa Hopkins. It is therefore **RECOMMENDED** that the Court dismiss this action as to these two Defendants without prejudice pursuant to Rule 4(m) for failure to timely effect service of process.

### **PROCEDURE ON OBJECTIONS**

If any party seeks review by the District Judge of this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties objections to the Report and Recommendation, specifically designating this Report and Recommendation, and the part in question, as well as the basis for objection. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy. Fed. R. Civ. P. 72(b).

The parties are specifically advised that the failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and

waiver of the right to appeal the judgment of the District Court. *See, e.g., Pfahler v. Nat'l Latex Prod. Co.*, 517 F.3d 816, 829 (6th Cir. 2007) (holding that “failure to object to the magistrate judge’s recommendations constituted a waiver of [the defendant’s] ability to appeal the district court’s ruling”); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005) (holding that defendant waived appeal of district court’s denial of pretrial motion by failing to timely object to magistrate judge’s report and recommendation). Even when timely objections are filed, appellate review of issues not raised in those objections is waived. *Robert v. Tesson*, 507 F.3d 981, 994 (6th Cir. 2007) (“[A] general objection to a magistrate judge’s report, which fails to specify the issues of contention, does not suffice to preserve an issue for appeal . . . .”) (citation omitted)).#

**Date: February 13, 2020**

**/s/ Elizabeth A. Preston Deavers**  
**ELIZABETH A. PRESTON DEAVERS**  
**CHIEF UNITED STATES MAGISTRATE JUDGE**